CHARLES ELMORE CROPLEY
CLERK

NO. 653

IN THE

Supreme Court of the United States

October Term, 1945

GAS RIDGE, INC.,
Petitioner,

v.

SUBURBAN AGRICULTURAL PROPERTIES, INC.,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals, Fifth Circuit, and Brief in Support Thereof.

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FIRM FOUNDATION—AUSTIN

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PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals, Fifth Circuit, and Brief in Support Thereof.

To the Honorable Harlan Fiske Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petitioner, Gas Ridge Inc., a Wisconsin private corporation, respectfully prays this Honorable Court for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, for

the reasons hereinafter stated.

The brief in support of the petition begins at page 10 hereof.

Emphasis within quotations in the petition and brief has been supplied, unless otherwise indicated.

I

JUDGMENT BELOW.

The judgment sought to be reviewed, affirming a decree of the District Court of the United States for the Western District of Texas dated October 4, 1944, was entered July 12, 1945 (R. 194 to 200). Petitioner's motion for rehearing was denied September 13, 1945, with a dissenting opinion by Circuit Judge Sibley (R. 269 to 271).

II

SUMMARY STATEMENT OF THE MATTERS INVOLVED.

The questions presented relate to a contract dated December 7, 1920, for the drilling of an exploratory well for oil or gas upon a tract of 2070 acres, more or less, situated in Bexar County, Texas, and to subsequent development operations thereon and the marketing of oil and gas therefrom. The issues to be presented here are ones of law involving construction of the contract in question under the undisputed facts.

The original lessor (Hamilton Land & Development Company) was the predecessor in title of respondent. Petitioner is the successor in title and right of the original lessee, San Antonio Oil & Natural Gas Company.

It is conceded that oil or gas had been continuously marketed from the property to the date of trial by petitioner and its predecessors for some twenty-three years, the oil by truck transport to a nearby refinery and the gas to United Gas Pipe Line Company (and its predecessors), for transmission to neighboring United States military establishments and to San Antonio, about twelve miles distant from the property involved.

When the case was tried there were twelve shallow oil wells and six shallow gas wells on the property, the oil and gas from which had been continuously produced and marketed, as aforesaid for many years. Petitioner owned and operated several other leases in the immediate area, upon which were situated a number of producing oil and gas wells, the production from which had been marketed in like manner and during substantially the same period. The oil throughout the area was produced from an average depth of 450 feet and the gas from approximately 750 feet. Oil was being produced and marketed in like manner by other operators in the field. Petitioner was the only producer of gas, its entire output, including that from the lease in controversy, being sold to United Gas Pipe Line Company, for transmission and use as aforesaid.

The case was tried to the Court, resulting in a decree of cancellation and removal of cloud, whereby petitioner's leasehold estate and its rights thereunder were lost, inclusive of the said eighteen oil and gas wells (R. 183-186).

By its trial complaint, respondent charged that for more than five years petitioner had operated the lease in question here at a recurring and continuing net loss, in that it had failed to produce oil and gas, or either, in paying and commercial quantities, wherefore respondent contended that petitioner's leasehold estate should be cancelled and its rights and interests thereunder forfeited and the cloud on respondent's title resulting therefrom removed (R. 16-20).

By its amended answer, petitioner joined issue upon the recited grounds for cancellation (R. 21). There were other defenses urged, which will be noted only incidentally as they involve disputed evidentiary and procedural questions.

The judgment of the District Court was that the lease (insofar as it covered 1820.8 acres) permanently ceased to produce either oil or gas, or both oil and gas, in paying and commercial quantities, more than five years prior to the date of the decree (October 4, 1944), and adjudged its cancellation and removal as a cloud upon respondent's title (R. 183-186).

III

BASIS OF JURISDICTION OF THE SUPREME COURT.

The Judicial Code, Section 240, as amended by Act of February 13, 1925, 43 Stat. 938 (U. S. C. A., Title 28, Section 347; Supreme Court Rule 38, subd. 5 (b).

IV

QUESTIONS PRESENTED.

First Question.

Has the Circuit Court of Appeals by its decision in this case decided an important question of local law in a way probably in conflict with applicable local decisions?

Second Question.

Has the Circuit Court of Appeals by its decision in this case so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for exercise by the Supreme Court of its power of supervision?

V

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT OF CERTIORARI

First Question

The issues of law arising hereunder is of very grave importance in its bearing upon the title status of many of so-called "stripper leases" in Texas as well as throughout the Mid-Continent oil and gas area generally, arising from the decision of the Circuit Court of Appeals that the determinable fee in minerals inuring to the lessee in contracts of this nature may be lost by forfeiture to the lessor under circumstances where:

(a). There is absent from the contract any provision of forfeiture because of the conditions upon which the decision of the Circuit Court was based; and

(b). There are present in the contract specific, unambiguous provisions clearly indicating the intent of the parties that the determinable fee estate acquired by the lessee thereunder would not terminate because of the happenings upon which the decision of the Circuit Court was based.

The vital importance of this question to the oil and gas industries can hardly be over-emphasized. The Court judicially knows that there is hardly an industrial activity to which title assurance is more essential than in the production and marketing of oil and natural gas, nor where even the breath of

suspicion will result more disastrously, particularly to the smaller concerns who sustain the heavy burden of maintaining on production that type of lease commonly known as a "stripper," indicating operation over many years with attendant gradual decline in output and thus distinguished from "flush" production.

Authoritative local decisions prevailing over a substantial period become a rule of property upon the faith of which the citizen must perforce make his investments and conduct his business activities. The decision of the Circuit Court here, it is most earnestly submitted, has the effect of overturning long established precedents, as declared by the Supreme Court of Texas, for the interpretation of contracts such as that involved here, which will probably result in rendering uncertain the applicable principles of law which hitherto had been generally regarded as settled, an assertion which petitioner will endeavor to sustain in the supporting brief.

Second Question.

That in its decision the Circuit Court has so far departed from the accepted and usual course of judicial proceedings, or has so far sanctioned such a departure by the district court in this case, as to call for an exercise by this Court of its supervisory power, is indicated by the following:

The Circuit Court sanctioned and approved the action of the trial court in materially changing the written agreement between the parties by subtracting therefrom the word "or" and substituting the

word "and," whereby, assuming arguendo that the phrase "in paying quantities" could be implied in the circumstances, the contract was made to speak an entirely different meaning in relation to the condition of forfeiture upon which its cancellation was based, in that the word "or" as used in the context permitted the implied condition of production "in paying quantities" to be met by such quantum of natural gas, whereas by substitution therefor of "and" such implied quantum could be met only by the requisite production of both oil and natural gas.

There is no principle more firmly established in American jurisprudence, nor one more essential to maintenance of orderly and equitable judicial procedure, than that the courts will not be permitted, in the guise of interpretation, to so in effect rewrite contracts as to give to them a legal meaning different from that manifestly intended by the parties from the language used in making formal written records of their undertakings. This principle is elementary in its universal acceptation. As so clearly and forcefully pointed out by Judge Sibley in his dissenting opinion on the petition for rehearing, the effect of the judgment below and its sanctioning by the Circuit Court, was to relieve respondent of the burden of establishing, to justify the harsh remedy of forfeiture which it sought and obtained, that there was paying production of neither oil nor gas, and to authorize the expropriations of petitioner's property in the absence of such showing, assuming that the contract was conditioned at all upon the production of oil or gas in paying quantities, which petitioner most earnestly submits is not true.

WHEREFORE, your petitioner prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Fifth Circuit, directing the said court to certify and send to the Supreme Court of the United States for its review and determination a full and complete transcript of the record and proceedings in the said Circuit Court in this cause (numbered on its docket 11,232 and entitled Gas Ridge, Inc., appellant, versus Suburban Agricultural Properties, Inc., appellee); that the decree of the Circuit Court be reversed and your petitioner be awarded such other and further relief in the premises as this Honorable Court may deem proper.

Respectfully submitted,

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BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I.

OPINION BELOW.

The opinion of the Circuit Court of Appeals (Circuit Judges Samuel H. Sibley, Joseph C. Hutcheson and Elmo P. Lee, Judge Hutcheson writing the opinion of the Court) was filed July 12, 1945, and appears at page 194 to 200 of the record.

The dissenting opinion of Judge Sibley on petition for rehearing (denied by the majority September 13, 1945) was filed on said date and appears at page 269 to 271 of the record.

II.

JURISDICTION.

The jurisdiction of the Supreme Court is invoked under the Judicial Code, Section 240, as amended by Act of February 13, 1925, 43 Stat. 938 (U. S. C. A. Title 28, Section 347; Supreme Court Rule 38, subd-5 (b).

III.

GROUNDS UPON WHICH THE JURISDICTION OF THE SUPREME COURT IS INVOKED.

The grounds relied upon for invoking the jurisdiction of this Court have been set forth at pages 5 of the preceding petition. To recapitulate, they are that the Circuit Court by its decision in the case.

FIRST.

Has decided an important question of local law in a way probably in conflict with applicable local decisions.

SECOND.

Has so far departed from the accepted and usual course of judicial proceedings, or has so far sanc-

tioned such a departure by a lower court, as to call for an exercise by the Supreme Court of its power of supervision.

IV.

STATEMENT OF THE CASE.

The drilling contract the construction of which is involved here (the text being appended) is dated December 7, 1920 (R 34), Respondent's Ex. 1, pp. 1, 2 Exhibit Appendix). Excerpts therefrom pertinent to and controlling its interpretation as contended for by petitioner, are as follows:

> ". . . does grant, demise, lease and let . . . for the sole purpose of mining and operating for oil and gas . . . being the same property described more particularly in the deed from the Duluth & Texas Oil Company of Texas to said Hamilton Land & Development Co. (the lessor) . . . . *including the existing wells and personal property on said premises*, 'said lease to continue' for the term of five years from this date and as long thereafter as oil *or* gas is produced . . . *either from the existing wells upon said premises* or future wells to be drilled thereon."

> ". . . the lessee may sell and dispose of all oil and gas produced and shall account to lessor, out of the proceeds of such sales . . . . after deducting lessor's *proportionate* share of transportation and marketing cost thereof."

> "The lessee agrees to commence actual drilling upon said property of an oil or gas well . . . . to a depth of not less than twelve hundred feet unless oil or gas *in paying quantities* be found

or produced by lessee at a lesser depth, and upon completion of said well said lessee shall continue the development of said property *until said property has been reasonably developed.*"

"Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises *from any exhausted or dry well* or other operations including right to withdraw or remove casings."

"The lessee shall have the right to assign this lease in whole or in part and the development obligations hereinabove provided for shall be deemed to have been complied with whether performed by lessee *or any of its assigns.*"

The contract covered 2070 acres, more or less. Respondent sought cancellation insofar as it covered 1820.8 acres (R 16, 18).

There were six gas wells and twelve oil wells on the property when the case was tried (R 51). The natural pressure of the gas wells ranged from 30 to 80 lbs. per sq. in, with open-flow capacities from 5,000 to better than 40,000 cubic feet per day. The gas is sold to the United Gas Pipe Line Company, it being necessary for the latter to boost the pressure by compression for induction into its transmission lines. Compared to the cost of operating the oil wells operation of the gas wells costs very little (R 56-57).

Respondent sought cancellation upon the ground that "during such period of more than five years the defendant has operated said lease at a recurring and continuing net loss, such that for more than five

years said lease has failed to produce oil and gas, or either of them, in paying and commercial quantities" (R 19-20).

The trial court found that the *controlling* provision of the lease as to its *term* and *duration* is as follows (R. 177):

> ". . . lessor does grant, remise, lease and let unto lessee . . . for the sole purpose of mining and operating for oil and gas . . . that certain tract of land (described in the complaint) . . . . said lease to continue for the term of five (5) years from this date (December 7, 1920), and as long thereafter as oil *and* gas is produced from said leased premises by the lessee . . ."

The trial court concluded:

> "1. The mineral leasehold estate *automatically* terminated and expired by virtue of its own *terms, provisions* and *limitations*, upon the cessation of *production* in paying quantities, which occurred more than five years ago" (R. 182).

V.

ASSIGNMENTS OF ERROR.

First Assignment.

The Circuit Court of Appeals erred in affirming the judgment of the District Court and in not holding as a matter of law under the undisputed and conceded facts that respondent is not entitled to cancellation of the lease contract involved herein, because:

(3) The terms and provisions of said contract specifically provide and clearly show the intention of the parties that the estate of the lessee should continue so long as oil or gas was being produced from the leased premises; and

(b) It is without dispute that oil or gas had been regularly and continuously produced and marketed from said premises for a period of approximately twenty-two years prior to the trial (First Assignment of Error in petitioner's motion for rehearing in the Circuit Court of Appeals, First Proposition, at page one (R 203).

Second Assignment

The Circuit Court of Appeals erred in affirming the judgment of the District Court and in not holding as a matter of law under the undisputed and conceded facts that respondent is not entitled to cancellation of the lease contract involved herein, because, if it be assumed, contrarily to the legal effect of the lease, that the implied term "in paying quantities" operated as a limitation upon the duration of the determinable fee estate acquired by petitioner under the contract, or as a condition subsequent entitling respondent to reentry for a breach, but considering that such quantity of production of either oil or gas would satisfy the condition; that for some ten years prior to the trial petitioner had continuously produced and marketed from the premises large volumes of gas; and that there was no appreciable, definable expense attached to the production and marketing thereof, respondent failed to sustain the burden of showing that the lease had terminated for want of production of gas in paying

quantities. (First Assignment of Error in petitioner's Motion for Rehearing in Circuit Court of Appeals, second proposition at page 23" R.

THE EVIDENCE.

Pertinent to First Assignment

The lease was placed in evidence by respondent as its Exhibit 1 and appears in the Exhibit Appendix to the record at pp. 1-2 thereof (R 34). For convenient reference, copy of the text is also appended hereto.

Oil and gas have been produced from the premises for some twenty-three years (Respondent's trial complaint, R 19; Findings of the Trial Court (R 178-179). There were twelve oil wells and six gas wells on the premises at the time of the trial (R 51), the production from which had been and was being regularly marketed, the oil to a nearby refinery and the gas to the United Gas Pipe Line Company.

All of the capital stock of respondent is owned by the Alamo National Bank. The latter holds a mortgage against the land to secure a debt of some $95,000.00. The Bank acquired title June 19, 1937, the conveyance being made subject to outstanding mineral leases (R 124; respondent's Exhibit 10, at page 20 of the Exhibit Appendix to the record); and in turn conveyed to respondent by deed dated July 8, 1937 (R 116; respondent's Exhibit 18, at page 63 of of the Exhibit Appendix to the record). The principal concern of the Bank was to get rid of the lease because its existence, held by shallow oil and gas wells, hindered disposition of the fee and recoupment of its debt (R 159-160). Negotiations were had

between the Bank and representatives of petitioner for the drilling of a deep test on the property, which proved fruitless (R 159).

Respondent placed in evidence certificates from the Texas Comptroller's office showing the oil runs in barrels and the gas sales in cubic feet from several of petitioner's leases, including the one in controversy, for the period beginning January, 1941, and extending through March, 1944 (R 66-67; respondent's Exhibits 6 and 7, at pp. 8-9 and 10-11, respectively, of the Exhibit Appendix to the record), showing the production and disposition of substantial amounts of oil and gas.

VI.

ARGUMENT.

Summary of the Argument Under First Assignment.

The construction of the Circuit Court of Appeals of the lease contract here involved is not in accord with the decision of the Supreme Court of Texas in W. T. Waggoner Estate v. Sigler Oil Co., 19 S. W. (2) 27 (reversing the Commission of Appeals, 284 S. W. 921, and affirming the Court of Civil Appeals, 276 S. W. 936), where the following controlling principles in a comparable fact situation were stated, indicated by the following excerpts from the opinion, which are here copied for convenient consideration:

> "The following propositions must be regarded as settled by repeated decisions of the Supreme Court:

"1. Such a writing as that here called a lease operated to invest the party called lessee and his assigns with title to oil and gas in place".

"2. The estate acquired by the so-called lessee and his assigns was a determinable fee, which was lost on cessation of the use of the land for purposes of oil and gas exploration, development and production".

"3. (Inapplicable here).

"4. When a mining lease provided for oil or gas royalties, and failed to define the lessee's duty as regards development after discovery of paying oil or gas (the instant lease required reasonable development, but without condition of forfeiture for failure to comply), the law implied the obligation from the lessee to continue the development and production of oil or gas with reasonable diligence".

"5. Breach of the lessee's implied obligation for reasonable mineral operations will not authorize the forfeiture of the lease as for breach of condition subsequent, such obligation being a covenant".

"6. The usual remedy for breach of the lessee's implied covenant for reasonable development of oil and gas is an action for damages, though, under extraordinary circumstances—where there can be no other adequate relief—a court of equity will entertain an action to cancel the lease in whole or in part" (28-29).

The court said further:

"Contractual implications are justified only on the ground of necessity. 13 C. J. 558. Mr.

Merrill suggests that the true basis of the whole doctrine of implied covenants in oil and gas leases may be found in the determination of courts to enforce fair dealing between lessor and lessee which could not otherwise be assured. Merrill's Covenants Implied in Oil and Gas Leases, Sec. 112, p. 266. While necessity and fair dealing alike require the implication of the obligation by the lessee in leases such as the one now before the court for reasonable diligence in oil and gas exploration, development and production, yet neither necessity nor fair dealing requires the further implication that such obligation shall operate as a limitation on the estate acquired by the lessee" (32).

"The court ought not to conclude that the parties intended to prescribe a test for termination of the interests granted which could only be applied with the utmost uncertainty or confusion. Yet, if reasonable diligence in performing every one of the lessee's exploring, developing, producing and marketing operations was the test, neither lessor nor lessee could at any time have clearly or certainly known whether the estate granted was alive or ended. Such a test must inevitably diminish—if not destroy—the value of the rights of all parties derived from a mineral lease" (30).

And in *Decker* v. *Kirlicks*, 216 S. W. 385, the Supreme Court of Texas said (re provisions of an oil and gas lease):

"If the provision is ambiguous that alone condemns it as a forfeiture provision. A forfeiture should rest on sured ground. Where a contract is so vague in its terms that a court cannot determine its meaning, it would be unjust to enforce a forfeiture under it against one whose

only fault has been possibly to mistake its meaning. Forfeitures are harsh and punitive in their operation. They are not favored by the law, and ought not to be. The authority to forfeit a vested right or estate should not rest in provisions whose meaning is uncertain and obscure. It should be found in language which is plain and clear, whose unequivocal character may render its exercise fair and rightful" (386).

It would serve no useful purpose to multiply the numerous authoritative Texas cases in which these principles have been applied to a wide variety of factual situations. Many such are collated in 10 Tex. Jur., Sec. 164, p. 282.

It is stated to be a settled rule that language used in expressing their agreement will be construed in the light of the facts and circumstances surrounding the parties when the contract was made, the terms of the agreement being ambiguous or doubtful (10 Tex. Jur., Sec. 168, p. 290; *Merchants' Life Ins. Co.* v. *Griswold* (Comm. App., opinion adopted Tex. Sup.), 237 S. W. 232, quoting with approval statement of the rule in *McGregor* v. *Union Life Ins. Co.*, 120 Fed. 493-6, 57 C. C. A., 613-6; and in *Lockwood* v. *Railway*, 103 Fed. 243, 43 C. C. A. 202.

Applying the foregoing principles of construction to the drilling contract involved here, it may be noted:

(a) The agreement contains no provision of forfeiture whatsoever, even for failure to drill the first well;

(b) The lessor not only grants and demises the premises for oil and gas exploration, production and marketing, but included in the conveyance by express reference an undisclosed number of oil and gas wells and personal property situated on the premises when the grant was made;

(c) The duration of the lessee's estate was specifically and unambiguously fixed for a term of five years and as long thereafter as oil or gas should be produced from the property, *either from the existing wells* or future wells to be drilled thereon;

(d) In the contingency stated (failure to provide its own storage or receptacles), the lessor was required to participate proportionately in the transportation and marketing costs of oil and gas;

(e) Lessee was not authorized to remove machinery and fixtures placed on the premises, or to withdraw casing, save from an *exhausted or dry well* (the legal effect of this provision was adjudicated against the right of removal from a *producing* well in Wisconsin-Texas Oil Co. et al. (petitioner's predecessors) v. Clutter (Tex. Civ. App.), 258 S. W. 265, the case being remanded by the Supreme Court of Texas on another point);

(f) The lease was assignable in whole or in part, and the required reasonable development (failing which no provision of forfeiture was provided) would be satisfied whether performed by lessee, or *any* of its assigns; and

(g) The phrase "in paying quantities" appears elsewhere in the lease disassociated from the duration clause, in connection with the drilling of the first well, but without condition of forfeiture for failure to drill said well; and it may be recalled *that the grant included a number of oil and gas wells then on the property*, the legal title to which under all of the authorities vested in petitioner's predecessors and continued so long as they, or any of them might actually *produce* for marketing oil *or* gas therefrom and subject to loss only by voluntary abandonment or complete cessation of use of the premises for purposes of the grant.

It is undisputed that there was no gas transmission line in the area when the contract was made on December 7, 1920, and it would appear clear, therefore, that as to gas particularly the parties did not have in mind use of the word "produce" in the implied sense of "in paying quantities," because there was then no possible yardstick whereby the existing and contemplated gas production could have been equated in this respect, irrespective of quantity, because of the unknown factors of pipe line outlet, price, the capital investment requirement for a gathering system and such like items as would necessarily enter into the problem.

There is another very compelling reason why "in paying quantities" should not by implication be read into the duration clause of the contract, and that is, the minds of the parties having been directed to that status by use of the term as the criterion for cessation of drilling the first well short of a depth of twelve hundred feet, without condition of forfeiture

for failure to comply, it should not be assumed that they unintentionally omitted the phrase from the provision of the contract defining the duration of the estate granted. It cannot be gainsaid that they had in contemplation "paying quantities" when they made the agreement, in relation to the first well; wherefore, the presumption would appear to be inescapable that they did not intend to apply that measure to another phase of the contract from which it was absent (*State* v. *Mauritz Wells Co. et al.* (Tex. Sup.), 175 S. W. (2) 238; *Fleming* v. *Ashcroft et al.* (Tex. Comm. App., opinion adopted by Tex. Sup.), 175 S. W. (2) 401; *Dallas Joint Stock Land Bank* v. *Harrison* (Tex. Sup.); 156 S. W. (2) 963;

Respondent and the Circuit Court rely strongly, if not altogether, on *Garcia* v. *King* (Tex. Sup.), 164 S. W. (2), 509, to sustain the proposition that a determinable fee in minerals may be held to have automatically terminated if at the expiration of the primary term there was an absence of production in commercial quantity, by reading into the lease agreement such an implied limitation upon the duration of the grant where, as here, it was provided that the rights of the lessee would endure for the fixed term and as long thereafter as oil or gas should be "produced."

However, the effect of that decision must be determined in the light of certain controlling facts present here and absent there, as follows:

1. The phrase "in paying quantities" was not there used, as here, in relation to another obligation of the lessee, to which no condition of forfeiture was

attached;

2. There were no wells on the property the title to which passed to the lessee under the grant, with specific provision, as here, for continuation of the lessee's estate for the period of the primary term and as long thereafter as oil or gas should be produced from said existing wells and those to be drilled. In fact, there was no requirement to drill at all, the Garcia-King lease being the usual commercial type, with rentals fully paid for the fixed term;

3. There was no provision, as here, for participation by lessor in the cost of transporting and marketing oil and gas;

4. There was no inhibition in the contract, as here, against removal by the lessee of equipment, fixtures and casing except from an exhausted or dry well, evidenced by the finding of the court that the money for the exploration (a deep test) was realized by sale of the casings and other equipment from the shallow wells; and

5. Garcia v. King does not hold that the parties to a contract may not by apt language condition the duration of an estate as they please; or if it can be said that the Garcia-King case does purport to deny such right, it would be an unconstitutional invasion of the right of contract. However, evidencing that the court did not intend to announce any such obviously untenable doctrine is the following language from the opinion (512):

"It should be noted that we are here dealing

with a situation in which, under normal conditions, all of the producing wells on the lease in question *at the expiration of the primary period* were not producing enough oil or gas to pay a profit over and above the cost of operating the wells. In order to understand and properly interpret the language used by the parties *we must consider the objects and purposes intended to be accomplished by them in entering into the contract.* The object of the contract was to secure development of the property for the mutual benefit of the parties. It was contemplated that this would be done *during the primary period of the contract. . .*"

Here, the idea that any further development would be done, in a limitation sense, during and not after the fixed term is expressly negatived by the provision that the estate of the lessee would continue as long as oil or gas should be produced either from the existing wells or those which might be drilled in the future, because in December, 1920, the parties obviously had no way of knowing how much time would be required to develop a sufficient volume and quality of gas to attract a pipe line purchaser to the area.

And it may be noted how meticulously careful the Court was to confine application of the implied condition to the status of the lease at the end of the primary term. It cannot reasonably be inferred from the decision that if the Garcia-King lease had been commercially productive of oil or gas *at the end of the fixed period*, or if the status of its production at that time were not shown, the estate of the lessee, including his wells, equipment and casing, could be forfeited to a remote grantee of the lessor because

at the time of the later inquiry the production due to natural decline was not in paying quantities in the technical sense.

Such inference cannot be indulged, because Chief Justice Alexander, who wrote the opinion in Garcia v. King, was the author of the decision of the Supreme Court in *Watson* v. *Rochmill*, 155 S. W. (2) 783, where it was said in relation to conditions post-dating expiration of the fixed term of a lease:

> "The demoralized condition of the oil market and the low gravity in no wise prevented the operation of the well by the lessee *for whatever oil it would produce.* These conditions may have rendered it *unprofitable* to operate the well, but were not contracted against and consequently they did not prevent a lapsation of the lease . . . Under the facts of this case we hold that there was such a *cessation of production* as to terminate the lease as a matter of law."

In the Watson-Rochmill lease it was provided that it should remain in force for a term of three years from May 25, 1925, and as long thereafter as oil or gas, or either, was produced from the land by the lessee. A well was brought in on the lease in 1925, which produced oil until May 21, 1932. The oil was of low gravity. The well produced about one barrel of oil to ten barrels of salt water. No oil whatsoever was produced from May 21, 1932, to January, 1935. In response to the lessee's plea of estoppel, the court said further: "It appears, however, that the lease in question terminated by its own terms *automatically* upon *cessation* of production *after* the expiration of the primary term."

The proposition that to justify a forfeiture therefor absence of commercial production must be shown to have existed at the *end* of the primary term finds support in the further finding by Judge Alexander in the Garcia-King case that due to later development the lease was productive of oil in paying quantities when the case was tried. However, it was held that this would not avail the lessee because his estate had ceased to exist when the term ended and there was *then* absent production of oil or gas in paying quantities.

The vital importance of the question is emphasized by the court's extreme care to thus limit the effect of the decision, in evident recognition of the fact that if the estate of a lessee might be forfeited under conditions where the lease in question was producing oil or gas in paying quantities at the end of the primary term, although, due to the natural and inescapable decline in production throughout later years, it had ceased to so produce in the technical sense, many stripper leases in Texas would be placed in grave jeopardy, as the issue then would turn upon the factual determination by court or jury of their productive status at some time indefinable with exactitude subsequent to the ending of the fixed period, thus subjecting that type of lease to recurring attack, because a finding that the lease was once commercially productive would not be judicially conclusive of its status in that respect at a later date in consequence of a substantial lessening of the output, with the probable result that, despite governmental subsidies given in an effort to keep that type of lease on production in the face of constantly rising operating costs and inescapable decreasing revenues, the owners would face the additional handi-

cap of ruinous uncertainty and doubt respecting the title status of oil or gas offered for market, a condition which would invite widespread litigation and possible eventual disappearance of that type of essential activity from the American oil and gas scene.

The right to forfeit a vested estate in minerals should rest upon a surer foundation than this (*Decker* v. *Kirlicks*, Tex. Sup., supra, 216 S. W. 385). The court should in each case be so situated, from clear and certain proof offered by the complainant, that the specific condition of the contract for breach of which forfeiture is claimed could be pointed out, and the precise time of its occurrence noted. No lessee would have reasonable cause for complaint if at the instance of his lessor the issue of the commercial productivity of the lease at the end of the fixed period were submitted to court or jury, because if the issue should be decided adversely he could remove his equipment and casing and seek pastures anew.

But if, as here, the issue is precipitated by a remote grantee of the original lessor, some seventeen years after expiration of the primary term (R 15), with obvious uncertainty in the mind of the complainant as to just when the forfeiture occurred (R 19), and even more confusion on the part of the trial court after hearing the evidence as to when the estate of the lessee automatically terminated (R 182, 184); and under conditions where it is practically conceded by the new banking ownership that respondent, its creature, was commanded to seek forfeiture of petitioner's leasehold estate and oil and gas wells to facilitate the bank in the recoupment of its investment of $95,000.00, the lot of such

a stripper lease operator is indeed a hard one. Certainly there is nothing in the situation to appeal to the heart and conscience of the chancellor.

The trial court saw fit to find (R 180, para. 9) that petitioner's reason for attempting to hold this and other leases in the vicinity was the hope that it might share in the potentially large speculative values induced by the belief that the properties were underlain by deep production (Please see respondent's abandoned complaint, at page 7 of the record, paragraph 8, which furnishes a clear insight into the motivating purpose of this litigation). Aside from the fact that this belated and unrealized hope can have little bearing upon the construction of a written contract entered into some twenty-five years ago by the respective predecessors of the parties before the court (and evidently not shared by them, as the depth called for in the first test was only 1200 feet), the buoying hope of the wildcatter that some day he will come into his own should not be too severely condemned, because upon such intangibles as faith and hope and courage great institutions have largely been founded. Respondent does not say in its said abandoned complaint how long the premises have been "known to be underlain, at a depth of approximately 3600 feet, by a large potential oil and gas reserve, which production, if drilled and developed, would be of great value and would afford complainant a large income out of its royalty ownership, but which deep reserve the defendant has never tested, drilled or developed during the approximately twenty-two years which have elapsed since the date of the lease in question."

Surely, this assumed knowledge of the existence of a large potential oil and gas reserve could not

have been the prompting influence which caused petitioner and its predecessors to drill some fifty oil and gas wells, the latter manifestly with the hope and purpose of attracting a pipe line outlet for the gas. True, they took a chance, but they were engaged in a constructive enterprise, one which carried with it not only a hope of profit to themselves but which would benefit the entire community, and it occurs to petitioner that it comes with ill grace from the banking institution, for the sake of enhanced profits, to take action looking to the forfeiture of petitioner's estate and rights under conditions where if the latter and its predecessors had been derelict in further development, there was available to respondent the plain, adequate remedy of an action for damages, or for specific performance, requiring the drilling of a stated number of additional wells within a specified time, failing which the undeveloped portion of the lease would be cancelled. And in this latter connection, it may be noted that petitioner in 1940 obtained permits from the Texas Railroad Commission for the drilling of fifteen shallow wells on the premises in question (R 87), had completed six of said oil wells and was engaged in drilling a seventh when, because of order M-68, issued under the authority of the government, which restricted the drilling of oil wells to 40 acre tracts and gas wells to 640 acre tracts (petitioner's Exhibit 1, at page 40 of the Exhibit Appendix), further drilling was suspended.

VIII.

THE EVIDENCE.

Pertinent to Second Assignment.

As heretofore noted, the duration term of the lease was as follows:

> ". . . said lease to continue for the term of five years from this date and as long thereafter as oil *or* gas is produced from said leased premises by the lessee, its successors or assigns, as hereinafter provided, either from the existing wells upon said premises or future wells to be drilled thereon. . ."

Respondent, no doubt inadvertantly, misquoted the above term clause in its trial pleading causing it to read, as quoted, "oil *and* gas," instead of "oil *or* gas" (R. 19).

In its trial complaint respondent alleged: "During such period of more than five years the defendant has operated said lease at a recurring and continuing net loss, such that for more than five years said lease has failed to produce oil and gas, or either of them, in paying and commercial quantities" (R 18-20).

Throughout his Findings of Fact and Conclusions of Law, the trial judge treated conjunctively this particular issue, either by reference to "oil and gas" or to 'production", without distinction between the two (Findings, paras. 2, 7, 8, and 11, R 179-180; Conclusions, para. 1, R 182).

The witness LESLIE, called by respondent, tes-

tified in part as follows (R 56-57):

"Q. Compare, if you will, your operating costs of your oil wells as compared with your gas wells.

"A. Oh the gas it is not very much.

"Q. You don't have to pull those wells?

"A. No, sir.

"Q. You don't have any pumping equipment?

"A. No, sir; just maintenance of lines, a few odds and ends.

"Q. Relatively the cost of operating one of your oil wells is a great deal more than operating one of your gas wells?

"A. A little bit.

"Q. Relatively isn't it a great deal?

"A. Yes, sir.

"Q. In proportion it would be a great deal?

"A. That's right."

The gross receipts from the sale of gas from all of petitioner's leases for the years 1934 through 1943 and the first quarter of 1944 aggregated $27,718.35, with a net of $23,725.38, after deduction of royalties (Petitioner's Ex. "A", pp. 1-13). The gross sales of gas for the same period from the lease

in question amounted to $5245.52, and the net after payment of royalty to $4498.68 (Petitioner's Ex. "C", p. 4).

The witness Bussa, called by respondent, testified in part as follows:

"Q. Will you take that statement from the Comptroller and look through the monthly runs from the Hamilton-Swain lease from the time it begins in January, 1941, down to the present time?

"A. Would that be twelve wells all the time?

"Q. That is what the record shows, I believe, twelve wells more or less. Will you look through the monthly production over that period of time and advise us, Mr. Bussa, whether in your opinion, in view of your observation and experience in operating costs and conditions, wells making that amount of *production* from *twelve* wells during that period of time could be or have been operated at a profit?

"A. I don't believe it could (R. 73).

"Q. Mr. Bussa, may I ask a few more questions please, sir? If you had one pumper out there operating seven leases you would have less payroll than if you had seven; that is true isn't it?

"A. Yes, sir.

"Q. And that I understand to have been what you testified to?

"A. That was my idea.

. . . . . .

"Q. Assuming that this one man operates all *forty-nine* of these wells and all seven of these leases, remarkable as it may be, assuming it to be, nevertheless, please, sir, tell me whether still, in your opinion, Gas Ridge could operate those forty-nine wells even with one pumper profitably?

MR. BARTELT: That is objected to because it does not take into consideration the amount produced on the various leases and also the gas produced on the Hamilton-Swain.

MR. MILLER: By the assumption I mean to include all of the oil wells and all of the gas wells.

MR. BARTELT: If your honor please, there is no evidence before him what the gas production is on the Hamilton-Swain.

THE COURT: I will permit the testimony, he being or testifying as an expert.

"A. From the amount of the *oil runs* before me yesterday I would say it could not be operated profitably (R. 80-81).

"Q. Mr. Bussa, will you give us your estimate, please, of the relative cost of operating an oil well out there in this field as compared with a gas well?

MR. BARTELT: That is objected to. No testimony here shows that he has ever drilled a gas well or operated a gas well.

THE COURT: I think it is a proper question.

"A. Well, *it is an assumption on my part,*

what experience I have had with gas and oil. I would say it costs about three times as much to operate an oil well as a gas well."

"Q. Would you say not less than three times as much?

"A. Yes (R. 83).

The witness WALKER, an accountant, called by respondent, testified in part substantially as follows:

That he had made computations based on reports filed with the Railroad Commission by petitioner showing all of its oil runs from all of its leases, a similar statement showing the production in thousands of cubic feet from all of the gas leases, from January 1, 1941, through March, 1944, and copies of petitioner's income tax returns to the state of Wisconsin for the years 1934 through 1943, inclusive, one such computation on the basis of comparative income from each lease and the other on a comparative per-well basis, the latter upon the assumption that it costs three times as much to operate an oil well as it does to operate a gas well, the computations being made for the years 1941, 1942, and 1943 (R 152), with the result there was a wide variance in the claimed loss from *operations* on the *lease* here involved, dependent upon which method was used (R. 154-155).

The following circumstances are worthy of note in connection with the testimony of this witness: his conclusions are based upon the arbitrary assumption that it costs only three times as much to

operate an oil well as it does a gas well, whereas respondent's witness LESLIE, who actually operated the leases, testified that the comparative cost of operating a gas well was very little; WALKER'S figures do not purport to comprehend respondent's proportionate part of the cost of transporting and marketing the oil (hauling charges) or the gas (installing and maintaining the gathering system for delivery of the gas to the purchaser's meters); WALKER'S figures do not distinguish between oil production and gas production, but are based upon the *lease* as a unit; WALKER'S computations are based upon the *total* deductions claimed by petitioner in its Wisconsin income tax returns, without analysis thereof, or any of them, to show which of said deductions, if any, could properly be classified as operating costs, as defined in the Garcia-King case (164 S. W. (2) 509), where the court said:

> "In defining the term 'paying quantities,' the Court (in Parks v. Sinai Oil (& Gas) Co., 83 Okl. 295, 201 P. 517) said: 'It has been generally held that 'paying quantities,' when used in this connection, means paying quantities to the lessee. If a *well* pays a profit, even small, over operating expenses, it produces in paying quantities, though it may never repay its costs, *and the enterprise as a whole may prove unprofitable.* Ordinarily the phrase is to be construed with reference to the operator, and by his judgment when exercised in good faith" 511-512).

IX.

ARGUMENT.

Summary of the Argument Under Second Assignment.

In his dissenting opinion, Judge Sibley said (R 269 to 271):

"There is no fact finding that the six gas wells operate at a loss, and the evidence does not show it. The finding is that each of the twelve oil wells costs three times as much to operate as a gas well. It may be well be that the gas wells pay, and if so the lease is not at an end. Unless the lessor, who is the plaintiff, establishes that neither oil nor gas is produced in paying quantities, he is not entitled to cancel his lease. . . . By the terms of the lease it continues 'so long as oil or gas is produced', at a profit as amended by the Texas court. We ought to grant a rehearing, and unless it can be demonstrated from the record that there is a loss in producing the gas also, the judgment should be reversed."

The courts are as one on the proposition that the burden rests on the plaintiff to establish his com plaint by a fair preponderance of the evidence. This is particularly true where he seeks to acquire the vested rights of another through the disfavored remedy of forfeiture (Gulf Production Co. v. Cruse (Comm. App., opinion adopted by Tex. Sup.), 271 S. W. 886). The courts may not make a contract for the parties. It is enough that they have made certain terms, conditions on which their contract shall continue or terminate (Insurance Co. v. Coos

County, 14 Sup. Ct. 379, 151 U. S. 452, 38 Law Ed. 231), quoted in Burns v. American Nat. Ins. Co. (Comm. App., opinion adopted Tex. Sup.), 280 S. W. 762.

The intention of the parties to a contract is to be gathered from a consideration of the entire instrument, taken by its four corners. It is to be read, considered and construed as a whole, and all of its provisions must be looked to and construed together in order to ascertain its effect and meaning (10 Tex. Jur., Sec. 164, p. 282; United States Fidelity & Guaranty Co. v. Board of Commissioners, 76 C. C.A. 114, 118, 145 F. 144, 148; Reynolds et al v. McMan Oil & Gas Co., et al. (Comm. App., opinion adopted by Tex. Sup.), 11 S. W. 2nd, 778), citing Gilbreath v. States Oil Corp. (C.C.A.), 4 F. (2) 233 (writ refused by Supreme Court, 268 U. S. 705, 45 Sup. Ct. 639, 69 Law Ed. 1167), opinion on motion for rehearing, 14 S. W. (2) 819; Nelson v. Downtain, et al. (Comm. App., opinion adopted by Tex. Sup.) 265 S. W. 135).

The word "or" in its ordinary sense is disjunctive and alternative in its effect, and, unless there is some impelling reason apparent in the contract, it should be given its ordinary rather than a conjunctive meaning (Shell Petroleum Corp. v. Royal Petroleum Corp. (Tex. Sup), 137 S. W. (2) 753.

The record of the proceedings in the trial court demonstrates that: (a) respondent predicated its cause of action on the proposition that the lease as a whole, without distinction between oil and gas, was operated unprofitably; (b) respondent's evidence was addressed to its status in that respect

as an entirety, save for the witness LESLIE, called by respondent, who testified unequivocally and without factual contradiction or question from any source, that the cost of operating a gas well in relation to that of an oil well was very little; and (c) that the trial court's findings and his conclusions therefrom were based specifically upon the profit status of the "lease" respecting its "production", again without distinction between oil and gas.

Indicative of the trial court's possible misapprehension of the actual terms of the contract when the findings and conclusions were made and filed are the following circumstances: misquotation by respondent in its trial complaint of the language of the duration clause, whereby it was made to read conjunctively rather than alternatively (R 19), followed by restriction of respondent's case to the profit status of the lease as a whole, without purport of distinction between oil and gas; the allegation that the lease was not productive of oil and gas, or either, in paying and commercial quantities; and the colloquy between the court and counsel shown at page 142 of the record, in the course of which the court remarked: " 'Operating cost' isn't the *term* that is *used* in the lease. 'Produced in paying quantities' is the *term*."

Judge Sibley frankly states that the misquotation by the trial court of the duration clause of the lease (R 177) was overlooked by the Circuit Court. The trial was concluded May 17, 1944. On September 15, 1944, petitioner's motion to reopen the case to permit inclusion in the record of certain O. P. A.

orders relating to subsidies for stripper wells and other affidavit data was overruled (Circuit Court opinion, p. 1, para. 4). Judgment in the lower court was entered October 4, 1944 (R 186).

Thus it will be observed that a period of nearly five months elapsed between the conclusion of the trial and the entry of the judgment. Memorandum opinion of the trial court was delivered September 26, 1944, with directions for preparation and submission of the formal judgment (R 176).

However, irrespective of how the obvious misconception by the trial court of the gravamen of respondent's asserted cause of action and the correct verbiage of the duration clause of the lease came about, the result is that the Circuit Court of Appeals, with due apprizal of the record facts, nevertheless sanctioned the action of the trial court in decreeing forfeiture of petitioner's leasehold estate and wells under conditions where it is manifest that the trial court's action was based upon a misapprehension of the true purport of the contract involved in a vital and controlling particular.

It should not be assumed that if the trial court's attention had been been called to the fact that, assuming applicability of the implied condition "in paying quantities", respondent none the less would have prevailed in its effort to cancel the lease without even an attempt to sustain the burden of establishing that gas was not being produced within the meaning of such implication, particularly in view of the fact that the only witness who professed to have any first-hand knowledge of the gas operations, called and therefore vouched for by respondent, tes-

tified unequivocally that the operating expense incident to producing the gas was relatively very little (R 56-57).

It is most respectfully submitted, therefore, that it became the duty of the Circuit Court to reverse the decree of the lower court in the circumstances shown by the record; and that in declining to do so the Circuit Court so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the lower court, as to call for an exercise by the Supreme Court of its power of supervision.

X.

CONCLUSION.

The questions suggested by this record are of more moment to the community than would be the effect of their determination upon the individual fortunes of the parties. It might be of little concern, in a jurisdictional sense, that petitioner had been wrongfully deprived of its property. But when it is considered that the decision of the Circuit Court, if it is to become final, will serve as an authoritative precedent for determining the title status of possibly many other such similarly situated stripper leases in Texas, or even in other jurisdictions, it would appear that the issues are of such general importance as to bespeak their determination by the Supreme Court.

The principles clearly established by the decisions of the Texas Supreme Court in Waggoner Estate v. Sigler Oil Co., 19 S. W. (2), 27, and in Watson v.

Rochmill, 155 S. W. (2), 783, have in a very true sense become rules of property, in that probably few operators would undertake the testing and development of a lease in the face of the probability that when his production reached the stripper stage, although in profitable quantity when the primary term ended, he would be confronted with vexatious and expensive litigation over the factually uncertain issue of whether the lease had automatically terminated at some undefined time prior to the trial because of its alleged commercial unproductivity.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may issue in this cause to the United States Circuit Court of Appeals for the Fifth Circuit.

Arthur H Bartelt

ARTHUR H. BARTELT,
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P. O. Box 190,
Austin, Texas.

Fagan Dickson

FAGAN DICKSON,
Of Counsel
Austin, Texas.

No. 6640 Oil and Gas Lease.

Hamilton Land & Development Co.

San Antonio Oil & Natural Gas Co.

AGREEMENT made and entered into the **7th** day of **December** 1920 by and between Hamilton Land and Development Company, a Texas corporation, hereinafter called lessor and San Antonio Oil & Natural Gas Company, a South Dakota corporation, hereinafter called lessee, WITNESSETH:

Said lessor for and in consideration of the sum of one dollar and other valuable considerations to it paid by the lessee the receipt of all of which is hereby acknowledged and of the covenants and agreements herein contained does grant, demise, lease and let unto said lessee, its successors or assigns, for the sole purpose of mining and operating for oil and gas and of laying pipe lines and of building thereon tanks, towers, stations and other structures, and doing all things necessary or convenient in connection with the production and storage, transportation, sale or other disposition of said oil or gas, or both, all of that certain tract of land situated in the county of Bexar, State of Texas and being 2070 acres more or less, more generally known as the Hamilton-Swain tract and being the same property described more particularly in the deed from the Duluth & Texas Oil Company, of Texas, to said Hamilton Land and Development Company herein referred to and made a part hereof for description including the existing wells and personal property on said premises, said lease to continue for the term of five years from this date and as long thereafter as oil or gas

is produced from said leased premises by the lessee, its successors or assigns, as hereinafter provided, either from the existing wells upon said premises or future wells to be drilled thereon, reserving the right to all of the surface of the land not deemed necessary, useful or convenient by lessee in connection with its operations hereunder.

In consideration of the premises the said lessee covenants and agrees:

To deliver to the credit of lessor, its successors or assigns, free of cost in the tanks or pipe lines to which lessee may connect its wells the equal one-sixth part of all oil and gas produced and saved from said leased premises or at its option lessor may provide at its own expense and risk receptacles at the well for its said one-sixth royalty.

In event lessor shall fail to provide storage facilities or receptacles as specified in this instrument, the lessee may sell and dispose of all oil and gas produced and shall account to lessor, out of the proceeds of such sales, for the royalty above specified after deducting lessor's proportionate share of transportation and marketing cost thereof.

The lessee agrees to commence actual drilling upon said property of an oil or gas well on or before two hundred twenty days from date hereof and to complete same with reasonable diligence and dispatch to a depth of not less than twelve hundred feet unless oil or gas **in paying quantities** be found or produced by lessee at a lesser depth and upon the completion of said well said lessee shall continue

the development of said property until said property has been reasonably developed.

Lessee shall have the right to use in drilling and development operations, free of cost, gas and water produced on said land (except water from the wells of lessor) including the right to use water from tanks now existing or which may hereafter be placed in said premises.

When requested by lessor, lessee shall bury all pipe lines below plow depth.

No well shall be drilled nearer than two hundred feet to the house or barn now on said premises without the written consent of lessor.

Lessee shall pay for all damages caused by its operations to growing crops on said land.

Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises from any exhausted or dry well or other operations including right to withdraw or remove casings.

The lessee shall have the right to assign this lease in whole or in part and the development obligations hereinabove provided for shall be deemed to have been complied with whether reformed by lessee or any of its assigns.

No assignment of royalties shall be binding upon the lessee until the latter shall have been furnished with certified copies of such assignment.

Executed in duplicate this the **7th** day of **Dec.** 1920.

HAMILTON LAND & DEVELOPMENT CO.

By V. E. Hamilton
(seal) President.

Attest:
W. H. Kennon
Secretary.

STATE OF TEXAS

: -ss-

COUNTY OF BEXAR

Before me the undersigned, a notary public within and for the County of Bexar, State of Texas on this day personally appeared V. E. Hamilton, president of the Hamilton Land and Development Company, and W. H. Kennon, secretary of said company, known to me to be the persons whose names are subscribed to the foregoing instrument and severally acknowledged to me that they executed the same for the purposes therein expressed and in the respective capacities therein stated as the act and deed of said Hamilton Land and Development Company.

Given under my hand and seal of office this **7th** day of **December** 1920.

(SEAL) Louise Wiemers

Notary Public, Bexar County, Texas.

Filed for record Dec. 9, 1920 at 2:48 o'clock P.M.
Recorded Dec. 13 1920 at 10:45 o'clock A.M.
Jack R. Burke, County Clerk, Bexar County, Texas.
By Chas. Grossman, Deputy.

- - : CERTIFICATE : - -

THE STATE OF TEXAS,
COUNTY OF BEXAR.

I, JACK R. BURKE, Clerk of the County Court in and for Bexar County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an Oil and Gas Lease from Hamilton Land & Development Co .to San Antonio Oil & Natural Gas Co., as the same appears of record in Volume 619 on pages 470-572 of the Deed Records of Bexar County.

IN TESTIMONY WHEREOF, witness my hand and official seal, at office in the City of San Antonio, this the 24th day of November, A.D. 1923.

Jack R. Burke

Clerk, County Court, Bexar County, Texas.
By Garvin C. Legan

Deputy.